

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF ALABAMA
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January 22, 2008

NOTICE OF CORRECTION

From: Clerk's Office

Case Style: Chris E. Turner v. City of Auburn, et al.

Case Number: #3:07-cv-00162-MEF

Referenced Document: Attachment to Document #52
Third Party Complaint

This notice has been docketed to enter the corrected pdf of the referenced document into the record. The original pdf contained typographical errors. The corrected pdf is attached to this notice.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

CHRIS E. TURNER,

Plaintiff,

v.

CITY OF AUBURN, et al.,

Defendants,

vs.

CWH RESEARCH, INC.,

Third-Party Defendant.

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Case No.: 3:07-cv-162-MEF

THIRD-PARTY COMPLAINT

COMES NOW Defendant/Third-Party Plaintiff the City of Auburn in the above-styled cause and hereby asserts the following Third-Party claims, pursuant to *Federal Rule of Civil Procedure* 14(a) against CWH Research, Inc. (hereinafter "CWH").

1. The City of Auburn is a municipality and governmental entity located in Lee County, Alabama.

2. CWH is a corporation organized and existing under the laws of the State of Colorado with its principal place of business in Englewood, Colorado.

3. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §1332(a) as there is diversity of citizenship among the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. The Court also has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

FACTS

4. The City of Auburn contracted with CWH to provide job analysis review, written test development, test scoring, assessment center, feedback and validity as a decision-making tool for

the City of Auburn's selection of Battalion Chiefs for the Fire Department. (See Exhibit "A", Resolution by the City Council to adopt the letter of agreement between the City of Auburn and CWH). The contract between CWH and the City of Auburn specifically called for adherence to standards and guidelines established by several sources including the Federal EEOC Uniform Guidelines on Employment Selection Procedures. See Exhibit "A" at p. 2 of 7.

5. Using CWH's procedures and processes, the City of Auburn promoted two individuals to Battalion Chief in the Spring of 2006. As a result, Chris E. Turner, Plaintiff in the above-styled cause, sued the City of Auburn alleging that the City of Auburn has used discriminatory practices against African-Americans regarding particular jobs, including the Battalion Chief positions, and that the hiring practices of the City of Auburn are discriminatory in operation even if they are fair in form.

6. The contract between the City of Auburn and CWH specifically states:

CWH shall defend, indemnify, and hold [the City of Auburn], its officials, representatives, agents, servants and employees free and harmless from and against any claims, demands or actions brought by third parties which are related in any way or are associated with the negligence, tortuous acts or other unlawful conduct of CWH or its representatives, agents, officers and employees in the performance of this agreement.

See Exhibit "A" at p. 6 of 7.

COUNT ONE-REQUEST FOR CONTRACTUAL INDEMNIFICATION

7. The City of Auburn adopts and incorporates herein all averments of paragraphs 1-6 as if set forth in full herein.

8. The City of Auburn denies that it has ever engaged in discrimination against Chris E. Turner or any other employee and maintains that its employment decisions were based on legitimate, non-discriminatory reasons. The City of Auburn further maintains that the testing procedures established for selection of Battalion Chief were not discriminatory in practice or application. Without waiving said position, the City of Auburn alleges that to the extent it is found

liable to Chris E. Turner for race discrimination on Turner's claim regarding the City of Auburn's failure to award him the position of Battalion Chief, the City of Auburn asserts that it is contractually entitled to contributions and/or indemnity from CWH pursuant to the contract entered between the City of Auburn and CWH attached hereto as Exhibit "A".

Wherefore, the City of Auburn demands judgment against CWH for all damages or costs of penalties assessed against the City of Auburn as a result of the claims that Chris E. Turner has brought against it based on the fact that he did not receive a Battalion Chief Position.

COUNT TWO - REQUEST FOR COMMON LAW INDEMNIFICATION

9. The City of Auburn adopts and incorporates herein all averments of paragraphs 1-8 as if set forth in full herein.

10. The City of Auburn denies that it has ever engaged in discrimination against Chris E. Turner or any other employee and maintains that its employment decisions were based on legitimate, non-discriminatory reasons. The City of Auburn further maintains that the testing procedures established for selection of Battalion Chief were not discriminatory in practice or application. Without waiving said position, the City of Auburn alleges that to the extent it is found liable to Chris E. Turner for race discrimination on Turner's claim regarding the City of Auburn's failure to award him the position of Battalion Chief, the City of Auburn asserts that it is contractually entitled to contributions and/or indemnity from CWH pursuant to common law, the City of Auburn is entitled to contribution and/or indemnity from CWH.

Wherefore, the City of Auburn demands judgment against CWH for any and all damages that may be asserted against it in this matter.

Respectfully submitted this the 18th day of January 2008.

/S/ Randall Morgan
Randall Morgan [8350-R70R]
Elizabeth Brannen Carter [3272-C-38-E]
Counsel for Defendant/Third-Party Plaintiff
City of Auburn

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**SERVE THIRD-PARTY DEFENDANT CWH RESEARCH, INC. BY CERTIFIED MAIL AT THE
FOLLOWING ADDRESS:**

CWH RESEARCH, INC.
9085 E. Mineral Circle
Suite 350
Englewood, Colorado 80112

CERTIFICATE OF SERVICE

I Hereby Certify that I have this date served a true and correct copy of the foregoing *First Amended Third-Party Complaint* with the Clerk of the Court for the United States District Court, for the Middle District of Alabama, using the CM/ECF system which will send notification of such filing to: Jeffrey W. Bennitt, Esquire (bennittlaw@aol.com), Wanda D. Devereaux, Esquire (wdd@devxllc.com), and Richard F. Horsley, Esquire (rfhala@cs.com), this the 18th day of January 2008.

/S/ Randall Morgan
Of Counsel